

Department of the Treasury
P.O. Box 2508 - EP/EO
Cincinnati, OH 45201

Date: MAY 02 2001

Employer Identification Number:

Person to Contact - I.D. Number:

Contact Telephone Numbers:

Phone

FAX

Dear Sir or Madam:

We have considered your application for refund of Federal income tax under the provisions of the Internal Revenue Code of 1986 and its applicable Regulations.

Your organization was incorporated [REDACTED] b7C, b7D, s, of [REDACTED], a [REDACTED] tax exempt entities. The purpose of your organization, as stated in the original Articles of Incorporation, is to carry on any lawful non-profit business enterprise of charitable, religious, educational, or scientific purposes... On page 2 of Form 1023, you listed as activities "To assist consumers get back on tract financially, and to show them how to remain financially healthy, (debt free) in the future."

In response to subsequent correspondence, you stated you would provide budgeting and counseling services and a debt management program.

The budgeting and counseling program will consist of assisting the client in coming up with a budget and sticking to it. This includes analyzing their income and spending habits and suggesting ways they may improve their financial situation.

The debt management program will be a last resort after budgeting and counseling has failed. The organization will negotiate with creditors on behalf of clients in an attempt to have minimum payments, fees, and late charges reduced or eliminated. In response to further questions, you stated services will not be restricted to low-income persons, but will be made available to everyone from the community regardless of their level of income. The organization will not require creditors to contribute to the organization and will send payments to all creditors whether they agree to contribute or not. You stated contributions from creditors would be based on a percentage of the clients account balance. When asked to provide a copy of a standard agreement between the organization and any creditors or if a standard agreement had not yet been drafted to provide a description of any terms the

[REDACTED]
[REDACTED]
organization anticipates would be included in the agreement, you stated no standard agreement exists and you did not provide any specific terms you anticipated would be part of any such agreement.

You requested classification as an organization, which is not a private foundation, because you are described in Sections 509(a)(1) and 170(b)(1)(A)(vi). If exemption were to be granted, it appears you would be better described in Section 509(a)(2). The support you describe from creditors would be considered fees for services rather than donations.

Information you submitted indicated [REDACTED] % of your time will be devoted to debt counseling and negotiation, with debt counseling encompassing the educational part of your services. The educational services you will provide will consist of budgeting, the responsible use of credit and the importance of savings for future emergencies and hardships. No further details were provided. You stated you have no printed literature at this time.

You stated your qualifications to conduct your proposed activities consist of attending numerous educational seminars and self-education. In subsequent correspondence, you stated none of the seminars you attended have been specifically about credit counseling and debt management, but have been about budgeting, wise use of credit, understanding credit and credit rating, and saving strategies. You did not provide a specific list or any detail. You stated you had read numerous books on both consumer and business debt, but did not provide a specific list. You also stated you are currently studying accounting and economics at [REDACTED] and have talked with several counselors from consumer credit counseling services, but gave no further details.

The organization has a two-person board with one or both parties receiving compensation. On Page 3 of Form 1023 you indicated compensation would be determined by using the [REDACTED] average. When asked to provide copies of the pertinent portions of this document, you were unable to do so. We asked you to adopt a resolution agreeing that the majority of your Board of Directors will be non-salaried and will not be related to salaried personnel or to parties providing services. In addition, we asked you to agree that salaried individuals will not be able to vote on their own compensation and the board will make compensation decisions. You refused to adopt the resolution.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax:

Organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of

[REDACTED]
[REDACTED]

which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(2) of the Regulations defines the term "charitable" to include: Relief of the poor and distressed, or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operate exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Section 1.501(c)(3)-1(a)(1) of the Regulations states In order to be exempt as an organization described in section 501(c)(3), an organization be both organized and operated exclusively for one or more purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179, the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In Old Dominion Box Co. v. United States, 447 F.2d 340(4th Cir. 1973), cert. Denied 413 U.S. 910(1973) the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

In American Campaign Academy v. Commissioner, 92 T.C. 1053(1989) the Tax Court concluded that an organization could not confer substantial benefits on disinterested persons and still serve public purposes within the meaning of section 1.501(c)(3)-1(d)(ii) of the Regulations.

[REDACTED]

In general, an organization applies for recognition of exemption has the burden of proving that it clearly meets all the requirements of the particular section of the Code under which it has applied. See *Kenner vs. Commissioner*, 318 F. 2d 632 (7th Cir. 1963), and *Cleveland Coral practical college vs. Commissioner*, 312 F. 2d 203, 206 (8th Cir. 1963).

Rev. Rul. 69-441, 1969-2 C.B. 115 held a nonprofit organization formed to help reduce personal bankruptcy by providing information to the public on budgeting, buying practices, and the sound use of consumer credit, and assisting low-income individuals and families who have financial problems by providing, without charge, counseling, and, if necessary, budget plans for liquidation of indebtedness, qualifies for exemption. The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications. It aided low-income individuals and families who have financial problems by providing them with individual counseling and, if necessary, by establishing budget plans. Under a budget plan, the debtor voluntarily makes fixed payments to the organization. The funds were kept in a trust account and disbursed on a partial payment basis to the creditors, whose approval of the establishment of the plan was obtained by the organization. Its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

Section 5.02 of Revenue Procedure 90-27, 1990-1 C.B. 514, provides that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities; the anticipated sources of receipts; and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination from which administrative appeal or protest rights will be afforded.

Based on the application, the case history, and subsequent correspondence, you have not clearly established that you will operate exclusively for one or more purposes within the meaning of section 501(c)(3). You have not established you will operate in a charitable

[REDACTED]
[REDACTED]

manner or that you have a bona fide educational program with a qualified staff to conduct the program.

Therefore, it is suggested that you operate for a year. After this period, if you still wish to obtain exempt status, you should submit a financial statement and a detailed description of the activities you conducted during the year. The material, which you have already submitted, will be retained in our file for use at that time.

If at the end of another year, you qualify for a favorable determination based on continuous compliance with section 501(c)(3), exempt status and deductibility of contributions will be retroactive. However, as your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return Form 1120 until such time as you are able to demonstrate compliance with section 501(c)(3). Also, you should inform your donors that deductibility of their contributions cannot be assured until you obtain a favorable determination letter.

If you are in agreement with our proposed refusal to rule, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper Power of Attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the

[REDACTED]
[REDACTED]
organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

Steven J. Miller

Director, Exempt Organizations

Enclosures: 3

Form 6018
(Rev. Aug. 1983)

Department of the Treasury - Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

MAY 02 2001

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown below. I understand that if Section 7428, Declaratory Judgements Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

☒ Denial of exemption

☐ Revocation of exemption, effective

☐ Modification of exemption from section 501(c)() to section 501(), effective

☐ Classification as a private foundation described in section 509(a), effective

☐ Classification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for

☐ Classification as an organization described in section 509(a)(), effective

☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgement under section 7428.

(Signature instructions on Back)

Name of Organization:

Signature and Title

Date

Signature and Title

Date